

**UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
REGION 8**

**SOLVAY ADVANCED POLYMERS, LLC**

**Employer**

**and**

**Case No. 8-RC-16369**

**UNITED STEELWORKERS OF  
AMERICA, AFL-CIO, CLC**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.<sup>1</sup>

The following employees of the Employer constitute a voting group appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

*All Lab Technician Employees employed by the Employer at its Marietta, Ohio facility but excluding all other represented employees, all office clerical employees, and professional employees, guards, and supervisors as defined in the Act.*

Approximately 15 employees are in the voting group found to be appropriate.

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<sup>1</sup> The Employer and Petitioner filed post-hearing briefs that were duly considered. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employer. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

## **I. Issues**

The sole issue presented at the hearing was whether the laboratory technicians (which include senior laboratory technicians, journeymen technicians and a temporary technician) employed by the Employer at its facility in Marietta, Ohio constitute an appropriate voting group and should be included in an existing Unit of production and maintenance employees currently represented by the Petitioner. The Petitioner contends that all of the technicians share a community of interest with the existing unit and should be part of it. The Employer's position is that it is inappropriate to include the laboratory technicians with the production and maintenance unit and that, if anything, they should be in a separate unit. In addition to alleging that the technicians do not share a community of interest with the existing unit, the Employer also alleges that the 6 senior laboratory technicians are supervisors as defined in Section 2(11) of the Act. Finally, the Employer contends that the one existing temporary lab technician does not share a community of interest with the other employees.

## **II. Decision Summary**

The Petitioner seeks to have the laboratory technicians included in the unit of production and maintenance employees it already represents and requests an **Armour-Globe** election on this issue. See **Armour and Co.**, 40 NLRB 1333 (1942) and **Globe Machine and Stamping Co.**, 3 NLRB 294 (1937). I find that all of the technicians share a community of interest with the production and maintenance employees. I also find that the senior laboratory technicians are not supervisors within the meaning of Section 2(11) of the Act. Accordingly, the senior laboratory technicians, laboratory technicians and temporary laboratory technician constitute an appropriate voting group. Accordingly, I direct an election to determine whether the employees in the voting group are to be included in the current production and maintenance unit. If a majority of the

employees in the voting group vote for the Petitioner, they will be taken to have indicated their desire to constitute part of the existing production and maintenance unit represented by the Petitioner and I shall issue a Certification to that effect.

### **III. Facts**

The Employer, Solvay Advanced Polymers, LLC is a Delaware corporation engaged in the manufacture and sale of polymer products. It has a facility located in Marietta, Ohio.

The Petitioner and the Employer<sup>2</sup> are parties to a collective bargaining agreement in which the Employer recognizes the Petitioner as the representative for all production and maintenance employees at its Marietta, Ohio plant but excluding laboratory technicians, office clerical employees guards, professional employees and supervisors as defined in the Act. There are approximately 135 employees in the current production and maintenance bargaining unit.

The plant manager at the Employer's Marietta facility is Rick Casey. Seven managers report to him including Gary Hazlett, the maintenance manager, and Matt Kirkland, the CPU/MH manager<sup>3</sup>. The production and maintenance employees report to several managers including Hazlett, Kirtland as well as others.

The laboratory technicians report directly to quality control supervisor Mary Anne Ketelson, who in turn reports to Kirtland. Altogether there are 15 technicians. Six of the technicians have been designated senior technicians, one is a temporary technician and the approximately 8 other technicians have journeyman status.

The facility includes numerous buildings and structures located along Ohio Route 7. There are employee parking lots are found in the center of the Employer's property. The

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<sup>2</sup> The agreement was originally between the Petitioner and the Employer's predecessor, Amoco Polymers, Inc. Amoco merged with BP in 1999 and then on November 1, 2001 the Employer purchased the plant.

laboratory technicians are housed in a laboratory in one building located approximately in the middle of the property. Production and maintenance employees are located throughout the property. One maintenance group is located within fifty feet of the lab and report to supervision located in the same building as the lab. The closest production employees are located about 200 feet away from the lab.

The production and maintenance employees at the facility include chemical handlers, material handlers, maintenance mechanics, electronic mechanics, welders, machinists, carpenters, safety mechanics, safety inspectors, storage keepers, and laborers. Production employees report to shift managers who report to an area production manager. Maintenance employees report to a maintenance coordinator. The production and maintenance employees need only have a high school degree. The skills required for the jobs are obtained from on the job training or prior experience. As a general rule production and maintenance employees engage in a great deal of physical activity.

The laboratory technicians work in a laboratory which is located in a separate air-conditioned building with a controlled environment. The laboratory contains sophisticated testing equipment.<sup>4</sup> The technicians are responsible for testing product samples brought to them by chemical operators or material handlers from the plant. The operators or handlers bring the samples into the lab on a routine basis. Depending upon the type of sampling, materials can be brought into the lab every four hours or once in a shift. The operators log the samples into the lab and, at times, verbally communicate their requests to the technicians. The samples tested by the technicians include raw products, work in-process and final products. The technicians

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<sup>3</sup> The CPU/MH manager is the Polymers Compounding Unit/Material Handler manager.

<sup>4</sup> Some of the equipment includes gas chromatographs, titrimeters, spectrophotometers, rheometers, plastometers, micrometers and moisture analyzers.

perform the needed chemical tests on the samples and then report the results of their work. When testing samples of work in process, the technicians report their findings back to the shift managers so that adjustments, if needed, can be made to the product being produced on the floor. Such adjustments, for example, may affect the color of the product being produced.

The minimum requirement for a laboratory technician is the completion of a two year degree in a science or discipline, or equivalent experience. Laboratory technicians are charged with the responsibility to perform routine laboratory testing in accordance with established methods. The Employer also maintains a position of senior laboratory technician. These individuals have more experience in the lab, usually at least five to eight years. The senior technicians develop a number of the tests performed in the lab, write procedures and provide training and guidance to less experienced employees on their shift.

The production and maintenance employees are paid wages pursuant to the terms of their collective bargaining agreement. In this connection, the highest paid chemical operator earns \$22.00 per hour. The laboratory technicians are salaried employees. The average wage of a technician is \$24 to \$25 an hour with the highest paid technician earning \$48,000 a year and the highest paid senior technician earning \$56,000 a year. On average the technicians' pay averages \$2.00 an hour more than the production and maintenance employees. Both groups of employees receive similar benefits. All new employees attend the same two week orientation program upon hiring.

#### **IV. Analysis**

##### **A. Community of Interest**

It is well established that the Act requires only that a petitioner seek an appropriate unit, and not the most appropriate or comprehensive unit. See, **Morand Brothers Beverage Co.** 91

**NLRB 409 (1950), enfd. 190 F. 2d 576 (7<sup>th</sup> Cir. 1950) and Capital Bakers, 168 NLRB 904 (1967).** In deciding an appropriate unit, the Board first considers the union's petition and whether the unit sought is appropriate. **Overnite Transportation Company, 322 NLRB 723 (1966).** A petitioner's desire concerning the composition of the unit which it seeks to represent constitutes a relevant consideration. **Marks Oxygen Company of Alabama, 147 NLRB 228 (1964).**

When an incumbent union seeks to add a group of previously unrepresented employees to its existing unit, and no other labor organization is involved, the Board conducts a self-determination election. In such an election, if a majority of the employees vote against representation, they are considered to have indicated a desire to remain unrepresented, but if a majority vote for the petitioner, they are deemed to have indicated their desire to become part of the existing unit, represented by the incumbent union. The Board has held that it is necessary to determine whether the employees to be included in the existing unit constitute an identifiable, distinct segment so as to establish an appropriate voting group as well as sharing a community of interest with existing unit employees. **Warner Lambert Co., 298 NLRB 993 at 995 (1990).** This record establishes that the laboratory technicians constitute an identifiable, distinct group of employees so as to constitute an appropriate voting group. The next issue to be considered is whether they share a community of interest with the production and maintenance employees.

The Board has held that in arriving at an appropriate unit determination it weighs "various community of interest factors" including:

"[A] difference in method of wages or compensation; different hours of work; different employment benefits; separate supervision; the degree of dissimilar qualifications, training and skills; differences in job functions and time spent away from the employment or plant situs under State or Federal regulations; the infrequency or lack of contact, with other employees; lack of integration with work functions of other employees or

interchange with them; and the history of bargaining." **Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962).**

In the instant case, the evidence establishes that there is a very high degree of functional integration between the laboratory technicians and the production and maintenance employees. The work performed by the technicians is vital to insure the quality of the final product produced by production employees. The laboratory technicians are involved from the very start of the process by testing raw materials. During the production process, they perform tests on materials given to them by unit employees. According to testimony from Donna M. Riley, the Employer's current organizational director and interim human resource manager, if the technicians find deficiencies they contact shift managers in the production unit to make the appropriate corrections.

The Employer contends that if production employees stopped working the laboratory could continue performing special product testing and housekeeping duties. Riley's testimony indicates, however, that if the lab were to stop working, while the production department could still produce, there would be no method for the Employer to check whether the product was within specifications. Under these circumstances, for the Employer to determine whether the product could be sold to a customer would require some kind of outsource testing.

Although the technicians are housed in a separate laboratory on the Employer's premises this fact does not establish that they are removed from interaction with other employees in the production process. Production operators are continually taking samples to the lab for testing. In this regard, samples are delivered from the compounding unit as often as every four hours and there are special color checks that may happen more frequently. Other samples are delivered once each shift.

Angie Wigal, a laboratory technician with 12 years of experience, testified as to the process by which samples are logged into the lab. She stated the operators bring in the samples and log them into the computer system. As many as 100 samples are brought in every day by the chemical operators or material handlers. There is also verbal communication, at times, between the operators and technicians. The operators advise the technicians of special problems or concerns, or of the need to turn a sample around quickly. If the technicians find defective samples, they enter the data into the common computer system but also may call the production employees and let them know of the problem because production employees do not always check their computers on a routine basis.

The evidence also establishes that the maintenance employees have substantial working contact with laboratory employees. Riley testified that there are mechanics or "I & E"<sup>5</sup> technicians who are assigned to perform maintenance work and calibrate equipment in the lab.

With respect to functional integration of the lab technicians and the production and maintenance employees, it is significant that all of these individuals rely on a common computer system to relay information. Supplies are also obtained from a common source.

Although not occurring frequently, there have been a few instances of employees transferring between the lab and production and maintenance positions. Two employees have permanently transferred from the lab to production and maintenance and one employee into the lab. When vacancies occur in the lab they are posted, while production and maintenance jobs are bid upon according to the parties' collective bargaining agreement.

While the immediate supervisor of the laboratory technicians, Ketelson, has authority only over those employees and not over production and maintenance employees, it is also

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<sup>5</sup> "I & E" are instrument and electronic mechanics.



evident that at the next higher level of supervision there is some commonality of supervision. Matthew Kirkland, the Polymers Compounding and Materials Handling Manager, has authority over the compounding operators in the bargaining unit as well as the laboratory technicians.

With respect to the issue of terms of employment such as wages, hours and benefits the similarities between the production and maintenance employees and the laboratory technicians are significant. The production and maintenance employees are paid an hourly wage based on classification and seniority. The laboratory technicians, although paid a salary, do have a stated hourly rate and are paid time and a half for overtime above and beyond their normal work hours. On average, the pay for technicians exceeds that of the production and maintenance employees by \$2.00 an hour.

The laboratory is staffed by the technicians on a 24 hour a day, seven day a week basis. They work on a 28 day cycle and have two individuals per shift. Shifts work from six to six. Production employees work in a similar manner on a 28 day cycle with shifts from six to six. The maintenance department generally works days from 7:30 to 4:00 p.m., but there is a maintenance employee who works the same shift as the production employees in order to repair equipment.

The benefits paid to employees at the facility are similar. Health benefits, the pension plan, holidays, vacation and funeral leave benefits are uniform for the production and maintenance employees and the laboratory technicians. All newly hired employees attend the same orientation program at the company.

With respect to the skills and qualifications of the employees, the production and maintenance employees and the laboratory technicians admittedly have different duties and responsibilities at the facility. When carefully examined, however, the degree of their skills and

qualifications is not substantially different. While it is true that the lab technicians are required to have at least a two year college degree or equivalent experience, the production and maintenance employees are required to have at least a high school education. Some of the production and maintenance employees also have licenses and certifications for operating machinery such as tow motors and cranes. They may also have prior experience which contributes to their skills and qualifications. Maintenance employees take aptitude tests and demonstrate certain skills and knowledge including the use of tools and reading drawings. The evidence also establishes that at least on some occasions production and maintenance employees perform such tasks as calibrating machinery in the lab and running bulk density tests to establish quality of product.

Finally, with respect to the history of bargaining at the facility, the Petitioner has represented the production and maintenance employees for at least the last 12 years. The Petitioner has never represented the laboratory technicians at the facility. In 1991 the Petitioner did seek to represent the technicians in a separate unit but it was not successful in an election conducted by the National Labor Relations Board.

In conclusion, the evidence establishes that the laboratory technicians share a community of interest with the production and maintenance employees currently represented by the Petitioner. In so finding, I particularly rely on the fact that the work performed by all of these employees is functionally integrated and that there is frequent working contact among them. Accordingly, I find that the laboratory technicians constitute an appropriate voting group who share a community of interest with the existing bargaining unit sufficient to warrant their inclusion in the same unit.

## **B. Supervisory Status of Senior Laboratory Technicians**

The Employer has claimed that the six senior laboratory technicians at the facility are supervisors within the meaning of the Act. Section 2(11) of the Act defines a supervisor as:

Any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such actions, if in connection with the foregoing the exercise of such authority is not of a routine or clerical nature, but requires the use of independent judgment.

The burden of proving that an individual is a statutory supervisor rests with the party asserting it. **NLRB v. Kentucky River Community Care, Inc.**, 121 S. Ct. 1861, 1863 (2001).

In **Kentucky River**, *supra* at 1867, the U.S. Supreme Court stated Section 2(11) of the Act sets forth a three-part test for determining supervisory status. Employees are statutory supervisors if (1) they hold the authority to engage in any 1 of the 12 listed supervisory functions, (2) their exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment, and (3) their authority is held in the interest of the employer. Furthermore, the Court noted that individuals who merely direct the performance of discrete tasks rather than directing other employees have not engaged in responsible direction of work so as to confer supervisory status. **Kentucky River**, *supra* at 1871.

As noted above, the laboratory at the Employer's facility is supervised by Mary Anne Ketelson. She oversees the staff of six senior laboratory technicians, eight journeymen technicians and one temporary position.

The record contains the position guidelines for both the laboratory technician and senior laboratory technician position. A review of those documents reveals that the primary requirement for a senior position is that an individual have eight years experience as a lab technician with sustained high performance. This document does not reflect that the position has

any specific supervisory authority but notes that the employee requires minimal supervision and provides guidance and some direction to others.

Riley's testimony establishes that, in essence, a senior lab technician has more experience and has more responsibilities than a lab technician. The senior lab technicians develop tests, write procedures, provide training to some of the lesser experienced technicians and may also provide technical guidance. The highest paid senior technician earns \$56,000 as compared to \$48,000 for laboratory technicians.

In enacting Section 2(11) of the Act, Congress distinguished between true supervisors who are "vested with genuine management prerogatives" and lead persons who are protected by the Act even though they perform "minor supervisory duties." **Providence Hospital, 320 NLRB 717, 725 (1996)**. In each case presenting a supervisory issue the Board has stated that it must "differentiate between the exercise of independent judgment and the giving of routine instructions, between effective recommendation and forceful suggestion and between the appearance of supervision and supervision in fact. **Ibid. at 725**.

The record establishes that the Employer's senior laboratory technicians are more experienced technicians by virtue of their tenure. Their additional seniority has not transformed them into statutory supervisors. Rather, they function as leadpersons.

Within established parameters, senior laboratory technicians prioritize work and can make assignments to make sure all assigned work is accomplished. They report to Ketelson information regarding the technical skills of laboratory technicians but they are not part of the formal evaluation process. They may be present at interviews of potential hires but they do not make recommendations. They cannot fire technicians and they cannot discipline. If there are problems they can bring matters relating to discipline to the attention of the supervisor.

The senior technicians do fill in for the supervisor Ketelson when she is not present. This occurs about four weeks out of the year. There is no one individual who fills in all the time but it may be the senior technician working on that particular day. When asked what authority these senior technicians have, Riley stated they have authority to retest work and work with other departments in the plant. There are no specific examples of disciplinary authority being exercised by senior laboratory technicians when they filled in for Ketelson.

The Board has stated that where intermittent supervision of unit employees is involved, the test is whether the part-time supervisors spend a "regular and substantial portion" of their time performing supervisory duties or whether such substitution is sporadic and insignificant. **Aladdin Hotel, 270 NLRB 838 (1984)**. It is clear from the evidence that the senior laboratory technicians do not spend a regular and substantial portion of their time performing any supervisory duties when they substitute for Ketelson.

Although only a secondary indicia of supervisor status, the number of supervisors as compared to the number of employees when they allegedly supervise is irrelevant. The Employer alleges that six of the 15 laboratory technicians have attained the status of supervisor. This would constitute a very high ratio of supervisors to employees.

The Employer has the burden of proving its claim that the senior lab technicians are supervisors under the Act. Under the circumstances of this case, the Employer has not established that the senior laboratory technicians possess sufficient indicia of supervisory authority under Section 2(11) of the Act to warrant their exclusion from the unit. At best the senior employees are lead persons on their respective shifts based on their years of experience and training. Accordingly, I find that they are not supervisors as defined in the Act and shall include them in the voting group.

**C.     The status of the temporary laboratory technician**

The Employer employs one temporary employee in its laboratory. This individual, Tom McConnell, was hired by the Employer through Manpower Professional Temporary Agency in Charlestown, West Virginia. He is paid by the temporary agency at a rate of about \$13.50 an hour. This compares with the average hourly rate for laboratory technicians of about \$24.00 an hour. McConnell receives no benefits through Manpower or the Employer.

According to Riley, McConnell has worked at the Employer's facility for about a year. She stated that there were several women in the lab who have been on maternity leave. The temporary employee was brought in to cover the vacancies. When asked how long the temporary would remain, Riley stated that the Employer expected to use the temporary until the last employee returns to work in February or March of next year.

The Employer suggests that the appropriate standard for determining whether to include temporary employees furnished by supplier companies is found in **M.B. Sturgis, Inc., 331 NLRB No. 173 (2000)**. In that case the Board considered a situation, similar to that found here, where an Employer used employees provided to it by a temporary employment agency. In concluding that a standard "community of interest" test applies to the temporary employees, the Board was guided by the principles found in Section 9(b) of the Act that each case shall be decided in order to insure that employees have the fullest freedom in exercising the rights guaranteed by the Act. **Id. at pp. 7-9.**

Although McConnell's wages are paid by Manpower, it is clear that the Employer directs his daily work activities. Riley's testimony establishes that McConnell's work activities are similar to those of the other lab technicians.

Since the weight of the evidence leads me to conclude that the temporary employee essentially engages in the same duties as other laboratory technicians at the facility and is subject to the same working conditions I find that he shares a community of interest with these individuals. He is therefore to be included in the voting group and will be eligible to vote in the election.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the voting group found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the voting group who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **UNITED STEELWORKERS OF AMERICA, AFL-CIO, CLC**. If a majority of employees in the voting group vote for the Petitioner, they will be taken to have indicated their desire to constitute

part of the existing production and maintenance unit represented by the Petitioner and I shall issue a certificate of results to that effect.

### **LIST OF VOTERS**

In order to ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. **Excelsior Underwear Inc.**, 156 NLRB 1236 (1966); **N.L.R.B. v. Wyman-Gordon Co.**, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this decision. **North Macon Health Care Facility**, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, by May 15, 2002.



Dated at Cleveland, Ohio this 1<sup>st</sup> day of May 2002.

/s/ Frederick J. Calatrello

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Frederick J. Calatrello  
Regional Director  
National Labor Relations Board  
Region 8

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